

OPINION
46-172

May 11, 1946 (OPINION)

JUDGES

RE: Retirement - Salaries

Your letter of May 10 has been received, asking for the opinion of our office with reference to the payment of retirement salary to Judge Frank T. Lembke, who retired under the provisions of chapter 217 of the 1945 Session Laws, and whose successor has now been appointed by Governor Aandahl.

Chapter 217, among other things, says: (Sec. 2)

When a judge of the District Court shall be retired under the provisions of this act, he shall receive the compensation allotted to his office for the remainder of his said term."

There does not appear to be any specific appropriation provided for the payment of the salary of a district judge who has retired under the terms of this chapter.

However, the salary of a state official, fixed by statute, is in effect a standing appropriation and must be paid, though no specific appropriation was made for the payment of the same by the legislature. The above-quoted language would, in effect, be standing appropriation for the payment of the salary of the retired judge who, under the terms of the law, is entitled to receive the compensation that was allotted to his office for the remainder of his term.

In the absence of a specific appropriation to pay this salary, it is the opinion of this office that the payment thereof should be made from any unexpended balance in the general fund of the state.

NELS G. JOHNSON

Attorney General